REMARKS

I. Status of the Claims

Claims 1-27 are currently pending in the application. Of these, claims 1, 11, 21, 22, and 24-27 are independent.

By this Amendment, claims 28 and 29 have been newly added. No new matter has been added by this Amendment. Upon entry of this Amendment, claims 1-29 would still be pending.

II. Rejections under 35 U.S.C. § 103

Claims 1-27 are rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Halbert (US 6,101,484) in view of Carver (US 2004/0010592). The Applicant respectfully traverses these rejections for the reasons set forth below.

1. Claims 1, 11 and 21:

Independent claims 1, 11, and 21 recite features involving the transmission of a content item at a quality level that is based on a total collective payment. For instance, these claims involve defining a collective earning threshold; receiving a total collective payment from the plurality of user devices, wherein the total collective payment includes a plurality of individual user payments that are each contributed by a respective one of the plurality of user devices; evaluating the received total collective payment with respect to the collective earning threshold; transmitting the content item at a premium quality level when the received total collective payment is greater than or equal to the collective earning threshold; and transmitting

the content item at an impaired quality level when the received total collective payment is less than the collective earning threshold.

That is, as claimed, the received total collective payment (e.g., actual payment) is evaluated to ascertain the manner of transmission.

Halbert discusses a dynamic market equilibrium management system for the sale of goods and services through an online buying group ("co-op") formed for the specific purpose of purchasing a particular product. In Halbert, potential buyers submit binding "offers" to purchase a product. These offers may result in the adjustment of the minimum offer threshold (depending on the offered price, number of outstanding offers and corresponding offer prices, etc.). When a suitable equilibrium is met (e.g., from a supply/demand/price), the buyers are informed whether their offer has been accepted or not. In Halbert, the buying group is either able to purchase the product or <u>not</u>. The evaluation of binding "offers" of Halbert is different than the evaluation of received payments (e.g., actual payments). Thus, Halbert is silent as to the evaluating and transmission operations as they pertain to received payments.

The Carver reference is also directed to an arrangement in which "bids" rather than received payments are evaluated and thus does not remedy the deficiencies in the Halbert teachings. Thus, the cited references do not disclose or suggest the claimed evaluating and transmission operations as they pertain to received payments.

Furthermore, as acknowledged by the Examiner, Halbert is silent as to transmission of content item at a premium or impaired quality level. The Examiner alleges that this aspect is taught by Carver. The Carver reference however simply discusses bidding to obtain greater "bandwidth" when bandwidth is shared between various parties. That is, Carver relates simply to bandwidth allocation and not the quality level of the content item which is

transmitted. Thus, the cited references also do not disclose or suggest the claimed transmission operations as they pertain to the premium or impaired quality level of the content item.

Finally, the Examiner asserts that:

> Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that buyers that want to receive high quality services would use the Halbert's group purchasing power method to contribute towards the cost of downloading data in order to download said data at different service levels (i.e. normal service, low jitter service, low latency service)[Carver paragraph 277], as taught by Carver. The group buying taught by Halbert and Carver would allow users to receive a higher quality transmission for a lower fee.

With respect to the above cited portion, the Examiner appears to be mischaracterizing the teachings of Carver. Carver is directed to a system in which a shared resource, i.e., bandwidth, may be bid upon to obtain greater allocation thereof. That is, in Carver, the bidding through a bidding broker may be for a particular bandwidth allocation (e.g., 2 Mbps, 1 Mbps, etc.) at some service level (e.g., normal service #1, low jitter service #2 and low latency service #3). See e.g., paras. [0260]-[0277]. It is unclear what if any relevance the service levels has in the bidding process; however, it is apparent that throughout Carver, bids are for bandwidth allocation. Thus, contrary to the Examiner's assertion, it would not have been "obvious to a person of ordinary skill . . . in order to download said data at different service levels (i.e. normal service, low jitter, low latency service))[Carver paragraph 277], as taught by Carver." Further, Carver simply pertains to bandwidth allocation, and not as to control over the "quality level" of the content item that is transmitted. Thus, one of ordinary skill in the art would not have combined the cited references in the manner suggested by the Examiner to read on the arrangement of claim 1.

In view of the foregoing, claims 1, 11 and 21 are believed to be distinguishable over the cited art and alleged well known facts, individually or in combination.

2. Claims 22, 24 and 25:

Independent claims 22, 24, and 25 recite features that involve defining a collective earning threshold; receiving a total collective payment from the plurality of user devices, wherein the total collective payment includes a plurality of individual user payments that are each contributed by a respective one of the plurality of user devices; evaluating the received total collective payment with respect to the collective earning threshold; and scheduling the content item for transmission when the received total collective payment is greater than or equal to the collective earning threshold.

As noted above with respect to claim 1, Halbert and Carver relate to bids or offers, and not received payments. As such, the cited references do not disclose or suggest the combination of the receiving, evaluating and scheduling operations as they pertain to received payments. In view of the foregoing, claims 22, 24 and 25 and their dependent claims are believed to be distinguishable over the cited art.

3. Claims 26 and 27:

Independent claims 26 and 27 recite features involving the transmission or receipt, respectively, of a content item in a manner that is based on a comparison between a total collective payment and a collective earning threshold. That is, the manner in which a content item is transmitted or received is based on a comparison between a total collective payment and a collective earning threshold.

As noted above with respect to claim 1, Halbert and Carver relate to bids or offers, and not received payments. For similar reasons as discussed above for claim 1, claims 26 and 27 are distinguishable over the cited references, individually or in combination.

4. Dependent claims 2-7 and 23:

A. Claim 2:

Claim 2 recites that the step of defining a collective earning threshold comprises selecting a threshold value from a time-varying threshold function. That is, the threshold value is variable and is selected from a time-varying threshold function.

The Examiner contends that this feature is taught in Halbert in column 7, line 55 to column 8, line 15. However, this cited portion simply describes a minimum offer threshold which may be adjusted based on submitted offers and show how such changes may occur with reference to a histogram. Halbert appears to be silent as to any operation of a selection of a time-varying threshold function (e.g., threshold varies according to time). The only mention of time relates to the closing time for the co-op. Accordingly, claim 2 is further distinguishable over the cited references. The Examiner has not adequately addressed our reply.

B. Claim 3-4:

Claim 3 recites that the further step of awarding a prize to one or more users according to a prize criterion. Claim 4 recites that the awarding step comprises awarding a prize to the user that has contributed the largest of the individual user payments.

Halbert and Carver do not appear to disclose or suggest any awarding of a prize or the like. In the prior Office Action, the Examiner acknowledged that this feature was not taught or suggested by Halbert. However, the Examiner now in this Office Action appears to allege that Halbert does teach this aspect, but provides nothing in the way of support as to where this

awarding aspect or such motivation is taught or suggested in Halbert. As such, the Examiner has not established a prima facie case of obviousness. Accordingly, claims 3 and 4 are further distinguishable over the cited reference.

C. Claims 5-7:

Claim 5 recites that the step of transmitting the content item at a downgraded quality comprises reducing the resolution of images included in the content item. Claim 6 recites the step of transmitting the content item at an impaired quality comprises reducing the size of one or more images included in the content item. Claim 7 recites that the step of transmitting the content item at an impaired quality comprises increasing the distortion of audio signals included in the content item.

As best understood, the Office Action alleges that these claimed aspects are taught by the service levels (e.g., normal service, low jitter service, low latency service). See e.g., Carver, para [0277]. It is unclear how these service levels teach reduction of the resolution of images included in the content item, reduction of the size of one or more images included in the content item or increase of the distortion of audio signals included in the content item. The Office Action does not address these claims with reasonable particularity. Accordingly, claims 5-7 are further distinguishable over the cited reference.

D. Claim 23:

Claim 23 further recites identifying a stale payment when the total collective payment is less than the collective earning threshold; and providing a content item reselection opportunity to the user device that placed the stale payment. For the Examiner's reference, as

described in the specification, a stale payment is for example payments for the selected content item transmitted prior to a particular time.

The Examiner contends that this feature is taught on column 7, lines 55-65 of Halbert. This cited portion of Halbert however simply describes binding offers which may or may not be employed to modify the minimum offer threshold or be accepted (e.g., successful) in the end. The Office Action as well as Halbert are silent as to any reselection opportunity for a user device that placed the stale payment or the conditions triggering such a reselection as claimed. The Office Action does not adequately address the language of this claim or how Halbert anticipates this claim or, moreover, our previous arguments. Accordingly, claim 23 is further distinguishable over the cited reference.

CONCLUSION

Based on the foregoing amendments and remarks, the Applicant respectfully requests reconsideration and withdrawal of the rejection of claims and allowance of this application.

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 13-4500, Order No. 4208-4076.

In the event that an extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 13-4500, Order No. 4208-4076.

Respectfully submitted,
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Dated: October 30, 2006 By: ______________________

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